

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,       )  
  )  
                  Plaintiff,       ) 2:08-CR-00066-RK-1  
  )  
                  vs.               ) Philadelphia, PA  
  ) July 24, 2009  
WILLIAM KING, M.D.,               )  
  )  
                  Defendant.       )

TRANSCRIPT OF SENTENCING HEARING  
BEFORE THE HONORABLE ROBERT F. KELLY  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:       BEA WITZLEBEN, AUSA  
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Proceedings recorded by electronic sound recording.

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3		E X H I B I T S		
4		R U L I N G S		
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5	Term of Imprisonment:	58	25	
	Thirty-Six Months			
6	Supervised Release:	59	2	
	Three Years			
7	Restitution in the	59	22	
	Amount of \$780,151			
8	Fine: \$12,500	60	4	
	Special Assessment:	60	18	
9	\$8,200			
10				
	No.	Description	Marked	Admitted
11	3	Letter from Mr. Ronald Johnson		37
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1 THE CLERK: (Audio begins midsentence) United States  
2 Court in and for the Eastern District of Pennsylvania may now  
3 appear and he shall be heard. God save the United States of  
4 and this Honorable Court. The Honorable Robert F. Kelly  
5 residing. Please be seated.

6 MS. WITZLEBEN: Good morning, Your Honor.

7 MS. MCCARTNEY: Good morning, Your Honor.

8 MR. BIDDLE: Good morning.

9 MR. NATHANS: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MS. WITZLEBEN: Yes, good morning. Bea Witzleben,  
12 Your Honor, for the United States. With me is Maureen  
13 McCartney, also from the U.S. Attorney's office. I have at  
14 counsel table David Bole from the FBI and Postal Inspector  
15 Theresa Ryan.

16 THE COURT: Okay. Thank you.

17 MR. BIDDLE: Good morning, Your Honor, Robert Biddle  
18 for Dr. William King who's seated next to me in the courtroom.  
19 There're also a number of additional people here who have  
20 written letters to the Court and at the appropriate time I'd  
21 like to introduce them to Your Honor and reference the letters  
22 that they wrote.

23 THE COURT: Okay. All right.

24 MR. BIDDLE: It's possible and depending on the  
25 Court's ruling and materials that we'll be providing to the

1 Court that we may have one or possibly two witnesses for the  
2 hearing today.

3 THE COURT: Okay.

4 (Pause)

5 THE COURT: Have you gone over the presentence report  
6 with your client?

7 MR. BIDDLE: I have. I've gone over it in great  
8 detail, Your Honor.

9 THE COURT: And, Dr. King, have you gone over the  
10 report?

11 THE DEFENDANT: Yes, sir. Yes, Your Honor.

12 THE COURT: You have objections? Let's deal first  
13 with the objection.

14 MR. BIDDLE: Yes, Your Honor. We filed a number of  
15 objections in our previously filed documents and I think they  
16 ninety-nine percent lay out the contours of our position today  
17 for the Court. With respect to the guidelines which I assume  
18 Your Honor will address in the first part of the sentencing  
19 hearing?

20 THE COURT: Um-hum.

21 MR. BIDDLE: We are objecting to the offense level 27  
22 calculation that the probation office entered into and we  
23 contend that the proper guidelines level is offense level 21.  
24 Specifically, that three enhancements that the probation  
25 office have recommended that the Court apply in fact do not

1       apply in this case. There's one for two levels --

2               THE COURT: Okay.

3               MR. BIDDLE: -- for obstruction of justice.

4               THE COURT: But, normally I would deal with the  
5       objections first.

6               MR. BIDDLE: Okay.

7               THE COURT: And, then --

8               MR. BIDDLE: Okay, I'll --

9               THE COURT: -- then we will indicate the guideline  
10       calculation.

11              MR. BIDDLE: Okay, certainly.

12              THE COURT: Okay.

13              MR. BIDDLE: So, the basis for our objections are as  
14       follows, Your Honor, and I'm supplementing what's already in  
15       the record.

16              THE COURT: Right.

17              MR. BIDDLE: Sophisticated means, the probation  
18       office concluded that the sophisticated means enhancement in  
19       the sentencing guidelines applied here but the Third Circuit,  
20       in an analogous case which is cited in our papers, I think it  
21       was Cianci, discussed a similar enhancement for the tax  
22       guidelines and said that these kinds of enhancements really  
23       only apply when the sophistication is atypical for the offense  
24       outside the heartland, if you will. And, Your Honor, when you  
25       look at the case law which we've cited extensively in our

1 papers, there wasn't anything particularly sophisticated in a  
2 health care fraud violation, Your Honor. Remember, this is  
3 the kind of offense that Columbia/HCA, the health care chain's  
4 has been investigated for. Enormous health care providers  
5 around the country have been investigated or charged with  
6 either civilly or criminally. And inherently, in order to  
7 commit a health care fraud offense, there needs to be some  
8 wrong codes submitted and there needs to be some records that  
9 don't support those codes or are falsified. That's how this  
10 crime is committed, Your Honor. Just like to rob a bank as  
11 far as use of force, there needs to be either a note  
12 threatening the use of force or there needs to be a firearm  
13 display. That's integral in the offense.

14 When you look at the conduct that Dr. King's been  
15 found guilty of, specifically of using a wrong code;  
16 knowingly, willfully, intentionally was convicted of using a  
17 wrong code and then a number of acts of covering it up,  
18 submission of ten false patient records. Those are the kinds  
19 of things, Your Honor, that are typical in health care fraud  
20 violations. They're just not extraordinary. When you look at  
21 the cases they talk about offshore bank accounts, in fact  
22 that's what the guidance in the guidelines talks about. The  
23 guidance says that this is the kind of case, the kind of fraud  
24 offense; multiple identities, use of the Cayman Islands, that  
25 kind of thing. This case isn't remotely of that

1       sophistication. You've got the wrong code, used year after  
2       year after year. You've got the start of an audit. You've  
3       got records that were falsified. The jury found that that  
4       were submitted in the course of the audit.

5               So, for that reason, Your Honor, the case law, the  
6       Third Circuit case law, the guidelines, application note,  
7       we've been laboring under the guidelines for twenty-two years  
8       I think now. I think it's pretty clear we contend that this  
9       is simply not a sophisticated means offense. So, that would  
10      lower it from 27 to 25. Do you want me to --

11             THE COURT: No --

12             MR. BIDDLE: --turn to the other --

13             THE COURT: -- I'd like to hear from the  
14      government --

15             MR. BIDDLE: Okay.

16             THE COURT: -- in response and we're talking about  
17      objection number 1 so that the --

18             MS. MCCARTNEY: Yes, Your Honor.

19             MR. BIDDLE: Yes, Your Honor.

20             THE COURT: -- record is clear.

21             MS. MCCARTNEY: And I just want clarification for the  
22      court defense counsel in their sentencing memo also raise the  
23      other issues with regard to this particular enhancement and I  
24      don't know whether the Court wants me to address them or not.  
25      The fact that this enhancement could not be applied in

1 conjunction with other enhancements, and I don't know whether  
2 the Court wants me to address that or just the factual basis  
3 for the enhancements.

4 THE COURT: Yeah, I'd like to hear.

5 MS. MCCARTNEY: Okay.

6 THE COURT: I'd like to deal with the whole thing at  
7 one time so that we don't -- yeah.

8 MS. MCCARTNEY: Well, Your Honor, then, just  
9 beginning with that because I think that can be easily  
10 disposed of. The defense, in their memo, raised the argument  
11 that the enhancement could only -- would not apply because of  
12 it was double counting because the behavior is already part of  
13 the health care fraud conviction. Here the defendant is  
14 clearly wrong, Your Honor, this enhancement is meant to  
15 increase the punishment based upon the methodology used in  
16 bringing about the fraud.

17 If one were to accept the argument raised by the  
18 defense, there could be no enhancement for any type of fraud  
19 because the argument would be that the fraud itself is enough  
20 and it would cover the enhancement with regard to  
21 sophisticated means. And we know that that's just not the  
22 situation. He also raises, in his memo, the fact that the  
23 conduct -- that you can't apply two separate enhancements  
24 under the guidelines and that is also, Your Honor, just flat  
25 out not true because the guidelines, unless they specifically



1       exclude enhancements being given in tandem, they are -- they  
2       can and should be applied separately. So with regard to those  
3       two issues I think the defense's memo is incorrect in their  
4       assertions there.

5               With regards to the factual scenario in this case,  
6       Your Honor, the defendant's methodology in perpetrating this  
7       fraud did, in fact, involve sophisticated means. Unlike the  
8       defense contention that it was simply submitting bills, false  
9       claims to an insurance company, this involved much more. In  
10      this case, as the Court probably recalls, the defendant, when  
11      he was in his medical practice, he would ask the patients when  
12      they came in to submit three separate forms. One, a patient  
13      information form, two, he would ask them to submit their  
14      insurance card which would be scanned on top of a referral  
15      form and then they would also complete the top portion of a  
16      medical record. Those documents, with the exception of the  
17      medical record, were submitted to Blue Cross when the bills  
18      were submitted. Here the defendant was convicted by the jury  
19      not only of health care fraud for upcoding but also for ghost  
20      visits. And when he submitted those bills to Blue Cross with  
21      regard to those ghost visits, he sat down in his office, Your  
22      Honor, he completed those forms that the patient had not,  
23      because they weren't there; he also would write on that  
24      patient information form, even on the ghost visits, a  
25      diagnosis, giving rise to the thought that this patient had

1 actually been seen and treated by him and thereby trying to  
2 avoid suspicion being raised with the billings that he'd  
3 submitted.

4           They are exactly the types of situations that  
5 involved execution and planning that is envisioned by the  
6 enhancement and it is applicable here, Your Honor. In  
7 addition to that, when the defendant was called for an audit,  
8 he deliberately created, whole cloth, a new set of medical  
9 records, not the ones that he normally capped, three pages  
10 which included very, very detailed information that he made up  
11 to put on those records to give rise to the auditor's belief  
12 that they were actually patient visits and this is what he did  
13 during the portion of the visit.

14           This was all done in the attempt to avoid punishment  
15 or avoid being caught for the fraud that he was perpetrating.  
16 The methodology that he used clearly involved sophistication.  
17 Now, the defense wants to make it seem like all he did was  
18 submit bills but, Judge, you know, from having sat through the  
19 trial, the transcript is clear that he did much more than  
20 that. And it is the situation that is completely envisioned  
21 by this rule. The cases that defense cites are not -- this is  
22 a very factually determined enhancement based upon the facts  
23 presented in individual cases. The comments to this section  
24 clearly, and the case law supports, are not an exclusive list  
25 that the courts have to determine on a case by case basis --

1 THE COURT: Okay.

2 MS. MCCARTNEY: -- what involves sophistication. So  
3 I would submit to you, Your Honor, that this enhancement  
4 should be applied.

5 THE COURT: Thank you. This is -- and what we're  
6 talking about is objection number 1 which really refers to  
7 paragraph 95 of the presentence report and that would add two  
8 offense levels for the use of sophisticated means in the  
9 commission of this crime and the definition of sophisticated  
10 means in the guidelines means especially complex or especially  
11 intricate offense conduct pertaining to the execution or  
12 concealment of an offense. For example, conduct such as  
13 hiding assets or transactions or both ordinarily indicate  
14 sophistication or sophisticated means.

15 His attempt to conceal the upgrading with the ghost  
16 visits from Blue Cross when he created ten patient files; gave  
17 those to the audit team. The difficulty in dealing with what  
18 he created for the audit team in order to evade detection in  
19 my view brings this within the area of sophisticated means and  
20 the two point enhancement and I take note of the fact too that  
21 that this conduct is also -- a lot that conduct is also the  
22 conduct charged in Counts LXXIII-LXXXII. So the objection in  
23 number 1 is denied.

24 Number 2 is -- defense may address that.

25 MR. BIDDLE: Your Honor, actually I forget the order

1       whether -- it was sophisticated --

2               THE COURT: All right, I'll give it to you.

3               MR. BIDDLE: -- special skill or obstruction.

4       I'll -- I can --

5               THE COURT: That it did not involve special skill.

6               MR. BIDDLE: Okay. Our argument's very brief on  
7       this, Your Honor, basically that this enhancement should be  
8       applied where the carrying out of this -- the offense was  
9       integral to the skill, special skill that the person had, for  
10      example in a murder case where the -- a doctor prepared a  
11      poison and the knowledge of the doctor was required to prepare  
12      the poison or transporting narcotics from overseas, the  
13      pilot's special skill as a pilot was used.

14              We contend that the res gestae, if you will, to use  
15      that old term, the essence of the offense here was purposeful  
16      incorrect billing which is an administrative act; it doesn't  
17      involve patient care. It involves providing false bills to  
18      the insurance company and that as a result, since these acts  
19      involve the administrative aspect of the practice of medicine  
20      that they aren't the type of conduct that would be covered by  
21      the special skill of the incident. The other reasons are set  
22      forth in our papers but just -- I want to briefly touch on  
23      what we believe is the pivotal issue here for the Court to  
24      decide. Thank you.

25              THE COURT: Okay. I'll hear from the government with

1       regard to the two point enhancement for the use of special  
2       skills.

3               MS. MCCARTNEY: Yes, Your Honor, again, I think that  
4       the Court needs to and clearly has recalled the testimony at  
5       trial and the exhibits that were -- that was submitted in  
6       trial, particularly with regard to the ten patient files that  
7       the defendant sat down and created. They involved great  
8       detail, all fraudulent detail, but great detail nonetheless,  
9       that only someone that possessed the special skills that a  
10      doctor gained in medical school and through their years of  
11      practice in the field of medicine would have been able to lead  
12      to -- to try to create a situation that they were authentic.

13             I mean, Your Honor, they dealt with situations where  
14      he was allegedly performing breast exams, vaginal exams, pap  
15      smears, sending the pap smears out for test results, coming  
16      back with Ph levels, he was conducting rectal exams; I mean,  
17      things that you or I, if we were to create a false medical  
18      record, would not have the base of knowledge to be able to put  
19      in to create the idea that these were actually authentic  
20      medical records. And when he sat down and did that, Your  
21      Honor, he used the skills, the special skills that he had  
22      acquired, types of skills that are envisioned by the  
23      enhancement being given in order to perpetuate the fraud that  
24      he was committing.

25             In addition to that, Your Honor, when he was creating

1 medical records, and the Court can probably recall this, there  
2 was testimony from patients that the medical records that he  
3 kept for visits that had actually occurred also included  
4 indications of things that had not actually been done but they  
5 gave the idea that a more extensive exam had been completed.  
6 There was things -- patients that testified that although he  
7 had written in a medical record that they were there for  
8 reason X, they actually were there for reason Y and no type of  
9 treatment for reason X was ever performed but again, the  
10 defendant, in an attempt to conceal the fraud that he was  
11 committing, was trying to make even those records, the ones  
12 that he actually kept for real patients, seem more legitimate  
13 than they actually were. Again, utilizing skills not of a  
14 medical biller, Your Honor, but of a doctor, acquired those  
15 skills through his years of medical school and through his  
16 years of practice. And the government would submit that the  
17 enhancement with regards to special skills is equally  
18 applicable in this case.

19 THE COURT: Okay. Based upon the testimony that we  
20 received at trial, I find that the offenses did involve the  
21 use of medical training to concoct diagnoses for both  
22 overbilled and ghost visits. He created patient files and  
23 that the medical training was required in order to commit and  
24 conceal that offense. Therefore objection number 2 is  
25 overruled.

1                   Objection number 3 is obstruction of justice.

2                   MR. BIDDLE: Yes, Your Honor, before I proceed, is  
3                   that -- a question for the Court. I do have a request for a  
4                   downward departure on these enhancements and I could address  
5                   that now or I --

6                   THE COURT: Yeah, let's get finished with these  
7                   objections before we do. .

8                   MR. BIDDLE: Okay. Yes, Your Honor. Okay. With  
9                   respect to obstruction of justice, the basis for this  
10                  enhancement has evolved. In the PSR it's laid out as  
11                  basically issues concerning Dr. King's communications with the  
12                  auditors, some of whom are in the courtroom today, and  
13                  statements made about his wife. In the government's latest  
14                  submission, that's to say the one, I believe that was filed  
15                  this week or last week, it seems that the position of the  
16                  government on this enhancement is too full. That the  
17                  destruction, the alleged destruction, which was not the  
18                  subject of a verdict by the jury, but the alleged destruction  
19                  of some thirty records that were subject to IBC audit is the  
20                  basis for the obstruction of justice enhancement and secondly  
21                  that my client's communications with his former lover,  
22                  Christine Rayo (ph.) were in some way obstruction of justice.  
23                  That's what I understand.

24                  If there's some other basis perhaps the government  
25                  can cover that but with respect to those two points, the

1 government contends that with respect to the destruction of  
2 the thirty files that it doesn't matter that my client was  
3 unaware of there being a federal investigation at the time  
4 that the files were destroyed and it relies on a Third Circuit  
5 case called Jenkins which is actually an outlier, Your Honor.  
6 Our objection was, for the Court, that you can't enhance a  
7 defendant's sentence for obstruction of justice where that  
8 conduct takes place before a federal investigation begins and  
9 in Jenkins, the Third Circuit had a case in the late '90s,  
10 before the guidelines were changed, and in that case there was  
11 a state law enforcement investigation under way. And there  
12 was evidence that the defendant, knowing that the state law  
13 enforcement investigation was under way, obstructed justice.  
14 Then eventually that state investigation, the record's a  
15 little murky, was superseded by a federal investigation.

16 In this case, unlike Jenkins, there's no evidence  
17 that there was any law enforcement investigation under way  
18 assuming that the destruction of these thirty files took  
19 place. Let's just assume for this argument that the  
20 government's factually correct. There's no evidence in the  
21 record that at that time, okay, there was any law enforcement  
22 investigation under way. So this is not Jenkins. The  
23 government says, Your Honor, you can rely on Jenkins, this ten  
24 year old Third Circuit precedent. They rely on that to say  
25 there doesn't -- apparently there doesn't need to be any



1 federal investigation under way whatsoever but that's really  
2 not how the -- certainly the sentencing commission read it  
3 because eight years after Jenkins was decided, they  
4 specifically amended the guidelines in 2006, three years after  
5 my client's last act subject to his conviction was committed,  
6 to say under certain specific circumstances, conduct occurring  
7 before a federal investigation -- a federal law enforcement  
8 investigation begins can be the basis for the enhancement  
9 where it materially affects the investigation. So apparently  
10 the sentencing commission, with all due respect to them,  
11 didn't agree with the Third Circuit's reading of it's own  
12 guidelines because they felt the guidelines had to be changed  
13 to address this issue.

14 So, Your Honor, we contend that the governing Third  
15 Circuit law really doesn't control this question. The  
16 probation office's summary of the investigation of this  
17 offense, as the Court sees in the PSR, is laid out very  
18 clearly. IBC audit, federal investigation. All the acts,  
19 according to the PSR, that took place during the IBC audit are  
20 the ones that relate to the thirty files. This wasn't the  
21 destruction of records, Your Honor, where the prosecutors had  
22 served a HIPAA subpoena on my client or had served a grand  
23 jury subpoena on my client, or had served some kind  
24 administrative subpoena on my client. Instead it was a run of  
25 the mill inquiry by some auditors that occur throughout this

1 country. To accept the enhancement on those facts here would  
2 be to federalize conduct in response to any carrier or fiscal  
3 intermediary's conduct. That's not at all what the commission  
4 had in mind and the other circuits that have been very clear,  
5 frankly a little bit more clear than the Third Circuit, in  
6 saying if the conduct occurred before 2006 and occurred before  
7 the federal law enforcement investigation began, we don't want  
8 to hear about an enhancement. We're not going to accept  
9 enhancements based on those facts.

10 So, Your Honor, we contend that with respect to one  
11 of the two prongs of the government's argument here that  
12 simply the facts don't support it and the law doesn't support  
13 it and the sentencing commission's own guidelines don't  
14 support it. To apply this enhancement based on the  
15 destruction of the thirty files on the 2006 guidelines manual  
16 would be a ex post facto enhancement. The guidelines were  
17 amended in 2006 to say okay, we'll now allow conduct before a  
18 federal investigation begins to be the basis of this  
19 enhancement. But Dr. King's last acts were in 2003 and it's  
20 just hornbook law, under our twenty-two years of the  
21 guidelines, that you can't have these ex post facto  
22 enhancements. In fact the Kopp case, there is a similarly old  
23 Third Circuit case like Jenkins and it said back in the  
24 '90s --

25 THE COURT: All right, let's hear from the

1 government.

2 MR. BIDDLE: Okay, Your Honor, I have another issue  
3 with the guidelines but --

4 THE COURT: What other -- you mean on the --

5 MR. BIDDLE: Obstruction.

6 THE COURT: -- obstruction?

7 MR. BIDDLE: I do. I do. And let me just stand up  
8 to the court.

9 THE COURT: Well, let's get to it then.

10 MR. BIDDLE: Yes, Your Honor.

11 (Pause)

12 THE COURT: Yes, what is it.

13 MR. BIDDLE: I've handed the Court -- yes, what's  
14 been marked are Exhibit 43 which I provided to the government  
15 earlier today. The other prong of the enhancement that the  
16 government relies on is the conversation that Ms. Rayo  
17 testified to at trial in a very brief fashion, Your Honor.  
18 The Court will recall that one of the trial attorneys was  
19 unable to cross-examine this witness because he had previously  
20 represented the witness. So there was a very curtailed, very  
21 brief cross-examination of Ms. Rayo. She -- the government  
22 characterized her testimony as indicating I spoke to Dr. King  
23 and he was trying to get me to lie to the FBI. Time wise  
24 there's no question, this call took place during a federal  
25 investigation. The question is what did Ms. Rayo understand

1 was going on. She told my investigator on a phone call that  
2 she didn't understand that Dr. King was asking her to do  
3 anything wrong. My investigator's in the -- outside the  
4 courtroom. She's available to testify. She's written a  
5 report which recounts her conversation with Ms. Rayo where Ms.  
6 Rayo basically says "I didn't understand that I was being told  
7 to do anything illegal". On that basis, Your Honor, the  
8 government cannot show by a preponderance of the evidence that  
9 there was obstructive conduct in that phone call. The Court  
10 has the trial transcript which the government sent to the  
11 Court this past week.

12 THE COURT: I read it before they sent it.

13 MR. BIDDLE: And then the report by my investigator,  
14 who's available to testify. On that basis, there's an  
15 insufficient factual basis to make the enhancement. Those are  
16 our two arguments.

17 THE COURT: Yes.

18 MS. MCCARTNEY: Your Honor ,let me first address  
19 counsel's dispute with regard to whether or not the guidelines  
20 that were used to come up with the guidelines for Dr. King are  
21 applicable to the obstruction of justice enhancement. There  
22 is -- there was not in the guidelines that would have been  
23 applicable to the time that the defendant committed the  
24 destruction of the records which would be obstructive conduct.  
25 There was no specific statement with regard to the pre-

1 investigation aspect of that conduct. Having said that  
2 however, Your Honor, this is a very open area of the law where  
3 courts are evolving with regard to how they are viewing  
4 guideline applications that occurred -- that take place at the  
5 time the defendant committed the conduct versus the time when  
6 the defendant was sentenced for the conduct. And whether or  
7 not those guidelines indicate ex post facto considerations.

8           There was a recent case in New York, Your Honor,  
9 where the court specifically held that post Booker, when the  
10 guidelines are no longer mandatory, where they are basically  
11 only advisory documents, that there can be no ex post facto  
12 considerations because that prohibition only applies to laws  
13 that are binding and since the guidelines are no longer  
14 binding that is not a consideration for the guidelines and  
15 there have been any other circuits that have adopted that same  
16 view: The Second Circuit, the Fifth Circuit and the Eleventh  
17 Circuit.

18           The Third Circuit has not specifically addressed that  
19 argument as it relates to the guidelines in that using the  
20 analyses that have been used in the Second Circuit, in the  
21 Third Circuit and the Eleventh Circuit but we don't even need  
22 to get to that issue, Your Honor, because based upon the  
23 testimony offered by Ms. Rayo in this courtroom, under oath,  
24 at trial, where she was specifically asked with regard to what  
25 the conversation that took place after receiving a phone call

1 from the FBI, calling the defendant to tell him that she had  
2 received that call from the FBI so there could be no dispute  
3 that a federal investigation had started and what the  
4 defendant had told her to tell the FBI was that the patient  
5 visits that he undertook in his office lasted between forty-  
6 five minutes and an hour. And she testified in court and she  
7 testified what she told Agent Boles when she hung up the phone  
8 and called him; that's not true. He counseled her to lie,  
9 Your Honor, because at that point he was aware of the federal  
10 investigation. He was attempting to make it appear as if the  
11 visits that his patients were undergoing in his office were  
12 much more complex thereby giving rise to the fact that he  
13 could legitimately have been billing the code that he was.  
14 That is obstructive conduct. Application note number 1 in the  
15 commentary makes that clear and we would submit that that  
16 enhancement is clearly made out.

17           Additionally, Your Honor -- and there's testimony  
18 that could be offered in this courtroom if the Court feels  
19 it's necessary that Dr. King also lied to a federal agent when  
20 he was interviewed with regard to this at the time that the  
21 search warrant was undertaken. But I don't think it's  
22 necessary, Your Honor, given the transcript that clearly  
23 states what Miss Rayo said. And it also said, Your Honor --  
24 and Ms. Rayo -- and she puts in her letter and I think she  
25 testified to it at trial, she cared about the defendant, she

1 still cares about the defendant. So the letter that was  
2 submitted by the defense, I would suggest should be given  
3 little weight. You have her trial testimony, under oath,  
4 subject to perjury.

5 THE COURT: I do not think it's necessary to take any  
6 additional testimony on that issue. I reviewed Christine  
7 Rayo's testimony in this past week and I recall her testimony.  
8 I think there was an attempt at trial to show that there was  
9 ill feeling between she and the defendant to attempt to  
10 discredit her testimony and I felt that she was very credible  
11 and showed no animosity toward the defendant because of their  
12 past association. And that her testimony that Dr. King told  
13 her first that she didn't have to talk to the FBI, as I  
14 recall, and that the visits were between forty-five minutes  
15 and one hour on page 242 of that testimony was an attempt to  
16 obstruct justice and the request for the two point enhancement  
17 based on that is granted and it is based solely on Rayo's  
18 testimony. Objection number 4 is sort of a summary. Do you  
19 agree, Mr. Biddle?

20 MR. BIDDLE: Yes, Your Honor, and objection 5 we're  
21 dropping.

22 THE COURT: Okay.

23 MR. BIDDLE: And I do -- would like to be heard on  
24 the downward departure but if the Court wants me to argue that  
25 here. It's separate than a variance; it's just with respect

1 to these enhancements.

2 THE COURT: I'm sorry, I --

3 MR. BIDDLE: My argument on the downward departure is  
4 separate from the variances. It just relates strictly to the  
5 guidelines and these three enhancements.

6 THE COURT: All right.

7 MR. BIDDLE: Your Honor, the defendant's conduct --  
8 the Court's found that the three enhancements apply and we  
9 accept that.

10 THE COURT: Um-hum.

11 MR. BIDDLE: But we contend that they just barely  
12 apply. For example, his conduct was not extremely  
13 sophisticated. The Court's found that it did meet the  
14 criteria, but it's not the use of offshore bank accounts, it's  
15 Bernie Madoff; it's not those kinds of high profile financial  
16 fraud cases where the enhancement clearly applies and that are  
17 the mainstream.

18 In that sense, Your Honor, it falls outside of the  
19 heartland of those cases where these kinds of enhancements  
20 apply. By analogy, Your Honor, it's like overrepresentation.  
21 The specific guidelines references 5K2.0 which is an outside  
22 the heartland departure. The Court can find that the  
23 defendant's conduct in committing these enhancements and  
24 committing the conduct that fits these enhancements isn't  
25 typical of the defendants that do find themselves subject to



1       those enhancements or alternatively that to apply those  
2       enhancements overrepresents the severity of his conduct just  
3       as the Court can find in criminal history cases, Dr. King has  
4       no criminal histories, category 1, but the Court can find that  
5       two or three prior convictions excessively enhanced the  
6       criminal history score so that the Court's allowed to ratchet  
7       back under the guidelines and I'm sure the Court's familiar  
8       from its many years of experience with these cases. So, we  
9       ask the Court to find that somewhere between 21 and 27 in the  
10      exercise in the Court's discretion which it has --

11               THE COURT: How does this differ from using it as a  
12      variant?

13               MR. BIDDLE: The Court can consider it in a variance  
14      as well. I'm just -- factually, though, it's a different  
15      argument. The variance is based on his history as a mentor,  
16      the help he's given youths in guiding them, the disadvantages  
17      he had growing up and how he overcame them, his remorse and  
18      his hepatitis C. Those are -- those aren't bases for  
19      departures; those are bases for variances. I just wanted to  
20      throw -- I wanted to raise this issue and preserve it for  
21      appeal that there is a basis for a downward departure from the  
22      three enhancements. That's all.

23               THE COURT: Okay.

24               MS. WITZLEBEN: Thank you, Your Honor. With respect  
25      to the heartland's arguments, I think the Court is quite right

1       that there is a difference between an argument for a downward  
2       departure, as the defendant has just advanced, and the  
3       variance argument which I think his arguments might go to as  
4       well. He could certainly argue that those factors he cites,  
5       his view that they are outside the heartland or perhaps less  
6       sophisticated than some other defendant might use, means, for  
7       example, less skill was required, those Your Honor, seem to me  
8       to be a question of where within the guidelines the defense  
9       would argue in the old days when the guidelines were mandatory  
10      and would certainly be something one could argue in the  
11      context of a variance. Whereas the Court is no doubt aware  
12      from the case law on the heartland departures there's a very  
13      high standard for whether something falls outside the  
14      heartland of the guidelines and nothing in this case fits  
15      there, Your Honor. The sophisticated means that he used, as  
16      the Court has found, while perhaps not as sophisticated as one  
17      could imagine, certainly fits right within the heartland of  
18      that guideline.

19               Also the special skill; clearly his training as a  
20      doctor was important to the method he chose to carry out this  
21      particular fraud. And finally with the obstruction, Your  
22      Honor, there couldn't be anything more -- I think more  
23      blatantly in the heartland. When you ask another witness to  
24      lie for you, that's obstruction. So, Your Honor, we don't  
25      think there's any basis for a departure. Of course, counsel

1       could argue freely with regard to variances and with regard to  
2       where in the guidelines the Court would set the range if the  
3       Court gives a guideline sentence but we think this is clearly  
4       within the heartland of each of those three enhancements, Your  
5       Honor.

6               THE COURT:   Okay.   Mr. Biddle?

7               MR. BIDDLE:   Nothing further, Your Honor, it just  
8       goes to the Court's --

9               THE COURT:   Yeah, I don't --

10              MR. BIDDLE:   -- benchmark.

11              THE COURT:   -- adhere to the departure argument.   All  
12       right, finish with your presentation.

13              MR. BIDDLE:   Yes, Your Honor.   I'd like to turn  
14       now -- I'm assuming the Court's found that the guideline range  
15       is 27.

16              THE COURT:   It is.

17              MR. BIDDLE:   Is that right?   Okay.   Your Honor, we're  
18       asking the Court to vary as it can under Tomko   and other two  
19       Third Circuit precedents, Tomko being a recent en banc  
20       decision, to guidelines level 12 which would provide for six  
21       months incarceration, nine months home detention as a  
22       provision of supervised release; so it would be a split  
23       sentence.

24              There are four bases for this but the global bases,  
25       which is not mentioned in the government's papers, neither

1 filing that the government provided quoted what we call the  
2 "parsimony provision" which is that under 3553 the Court is  
3 required, and this is reiterated in Booker, Fen-Phen, Rita,  
4 Gall, all the precedents that I know the Court's been hearing  
5 from, from the defense counsel for months. The sentence, Your  
6 Honor, has to be sufficient but not more than necessary to  
7 meet the objectives of sentencing. Sufficient, otherwise  
8 enough, but not more than necessary to meet the purposes of  
9 sentencing. And we contend that that sentence, the sentence  
10 at offense level 12, 6 months incarceration, 9 months home  
11 detention, almost 500 hours of community service meets that  
12 requirement. That that would be a reasonable sentence. And  
13 that what the guidelines number is, in light of the objectives  
14 of sentencing, in light of the defendant's personal history,  
15 his accomplishments, his mentorship, his hepatitis C and his  
16 remorse would be an unreasonable sentence. That is to say, it  
17 would substantively unreasonable.

18 Of course the Supreme Court has asked all district  
19 courts in the county not to give any deference to the  
20 guidelines. The court, in fact -- the Supreme Court stated in  
21 their cases that there's not any presumption that a district  
22 court can give that a guideline sentence is reasonable. The  
23 Supreme Court said, I believe it's Justice Breyer, that yes,  
24 on appeal there's a rebuttable presumption that a guideline  
25 sentence is reasonable but in the district court there's no

1 presumption that it's reasonable and we contend that that  
2 guideline sentence would be unreasonable in light of the  
3 purposes of sentencing.

4 Let's begin and I'd like to start with the  
5 defendant's personal history and his role as a mentor. At  
6 this point I would like to introduce the people that are in  
7 the courtroom and remind the Court, if I could take a few  
8 minutes, of what those people that are here wrote to the Court  
9 about.

10 THE COURT: All right.

11 MR. BIDDLE: Because this is the defendant's personal  
12 history. This is his --

13 THE COURT: All right, okay.

14 MR. BIDDLE: -- up from his bootstraps life story  
15 which shows that he doesn't need to be locked up for a long  
16 time to keep him from committing further crimes or deter  
17 others from committing crimes. Thank you. Mr. Johnson (ph.),  
18 Mr. Ronald Johnson. Your Honor, Ronald Johnson wrote a  
19 handwritten letter to Your Honor. He was on the track team  
20 with the defendant and he described the role, the  
21 inspirational role that the defendant played in his life and  
22 how on an ongoing basis he personally is aware of the  
23 mentorship that Dr. King has provided. He described in his  
24 letter a young athlete that Dr. King mentored and assisted and  
25 that he had personal knowledge of.

1 THE COURT: Okay.

2 MR. BIDDLE: His letter was number 3. Dr. Allen  
3 (ph.), Dr. Nathan Allen. Your Honor, Dr. Nathan Allen is with  
4 Summit Developers in Cranford, New Jersey. He previously  
5 served as deputy regional director for the Department of  
6 Justice during the late 1960s. He was cited by Attorney  
7 Generals Ramsey Clark and John Mitchell for sustained,  
8 superior performance. He described for Your Honor Dr. King's  
9 upbringing, his life and his involvement. He wrote to Your  
10 Honor "Dr. King's efforts to achieve a college education and  
11 serve as a blueprint for many of those trying to eliminate the  
12 shackles sometimes associated with urban living. His level of  
13 scholarship positioned him to become admitted to Wayne State  
14 University Medical School. He performed exceptionally well  
15 there and later developed his practice in the Pennsylvania and  
16 Maryland areas. He is competent, devoted to excellence in his  
17 profession and I am honored to provide him this letter of  
18 reference." Thank you, Doctor.

19 THE COURT: Thank you. Yes?

20 MR. BIDDLE: Mr. Chilson. Mr. Chilson, as a young  
21 man, was mentored by Dr. King and Mr. Chilson, if you could  
22 say a few words about the role that Dr. King played in your  
23 life.

24 THE COURT: He'll have to come forward.

25 MR. CHILSON: Okay.

1                   MR. BIDDLE: You can tell to His Honor how you got to  
2 know Dr. King and what role he played in your life and your  
3 educational career.

4                   MR. CHILSON: Hi, my name is Randy Chilson, Your  
5 Honor. I met Dr. King, probably about thirty years ago. It  
6 was through my ex-wife and our children actually met in school  
7 and that's how we became friends. Over the years Dr. King, he  
8 stressed the importance of education to me and being in the  
9 career that I was in, it didn't seem like it was important  
10 because I was going very well but I listened to him and he  
11 enabled me -- and encouraged me to finish my degree and  
12 then -- I have a degree in information technology. What that  
13 did me for me is the family that I'm from, there's -- I have  
14 twelve -- there's twelve of us. No one had ever graduated  
15 high school. I graduated high school and then once Dr. King  
16 encouraged me to finish college, what it did was my siblings  
17 looked up to me. So it broke the mold, it broke the st -- it  
18 broke that situation where nobody would finish school and  
19 it's -- from that point on it's really trickled down the line  
20 to where three of my other sisters are in the process now of  
21 getting their degrees and it's -- for Dr. King to go through  
22 what he's going through right now, it's -- to me it's hard to  
23 see and I would ask for you to be lenient.

24                   MR. BIDDLE: Thank you.

25                   THE COURT: Thank you.

1           MR. BIDDLE: Your Honor, Mr. Chilson's letter was  
2 Exhibit 12 that the Court received. Mr. House (ph.)? John  
3 House? Your Honor, Mr. House met Dr. King as a pharmaceutical  
4 representative, he knew him professionally; he's currently a  
5 senior district manager of a major pharmaceutical company.  
6 He's a graduate of Morgan State College in Baltimore and he  
7 stated, Your Honor, "I have always found Dr. King to be of the  
8 highest ethical standards of behavior and professionalism in  
9 his interactions with others, especially his patients. He has  
10 always been available to me for advice and guidance and  
11 demonstrates compassion to all."

12           THE COURT: Thank you.

13           MR. BIDDLE: Dr. Harris. Your Honor, Dr. Harris is  
14 here. Dr. Harris is an ophthalmologist practicing in the  
15 Philadelphia area for over twenty years. He has a private  
16 practice in Center City. He performs surgery at the Willis  
17 Eye Institute and also the Hahnemann hospital. He met Dr.  
18 King back in the early 1990s. He stated "over the years, I  
19 was especially impressed by the fact that Dr. King would  
20 consistently track me down to personally discuss his patients'  
21 conditions. It quickly became apparent to me that Dr. King  
22 was interested in his patients' well-being well beyond their  
23 obstetric or gynecological needs. I remember a particular  
24 patient who he sent to me for eye muscle surgery. Dr. King  
25 remained in contact with me -- with both me and the patient



1 during her immediate postoperative period to make sure she was  
2 healing well." He states, "Your Honor, I can confidently  
3 state that as a physician, Dr. King's career is characterized  
4 by honesty, diligence and overwhelming loyalty to his  
5 patients."

6 THE COURT: Thank you.

7 MR. BIDDLE: Thank you very much, Dr. Harris.

8 THE COURT: Thank you.

9 MR. BIDDLE: Gail Stephenson (ph.). Your Honor, Ms.  
10 Stephenson and her husband, Lee, wrote a letter to the Court  
11 which is Exhibit 19. She tells the Court that "Bill grew up  
12 in a large nuclear family that had very little in the way of  
13 material wealth and we believe that he may be the only member  
14 of his immediate family to strive for and obtain a higher  
15 level of education. It appears that the degradation and  
16 scarcity of basic life necessities were the catalyst for  
17 Bill's ambition augmented by hard work and sacrifice which  
18 fueled his accomplishments. However, it was his unwavering  
19 and often voiced desire to help other people avoid his  
20 formative years' circumstances of having little or no  
21 availability of medical care that led him to choose medicine  
22 as a career." Thank you, ma'am.

23 THE COURT: Okay. Thank you.

24 MR. BIDDLE: And, Your Honor, one of the -- both of  
25 the defendant's daughters are here. Laresha (ph.)? Your

1 Honor, Laresha wrote to the Court, her letter to the Court is  
2 Exhibit 25. "His years of hard work helped to provide his  
3 family the basic necessities of life: food, shelter and  
4 clothing. Furthermore, his work helped to provide the  
5 opportunity for my sister and me to attend college. I  
6 personally watch his staff and patients deliver praise for his  
7 work. Similarly, during my middle school years, Dr. King  
8 volunteered his services and provided free health screenings  
9 at a summer camp." Thank you.

10 THE COURT: Okay. Thank you.

11 MR. BIDDLE: Mr. Canonaro (ph.)? Your Honor, Mr.  
12 Canonaro provided a letter which is Exhibit 26. He writes  
13 that "In my approximately six years I have known the King  
14 family, they have impressed me with their dedication to  
15 education. Similar to their spirit of dedication to education  
16 is their extreme generosity. What most impressed me about the  
17 King family is their ability to forgive. I was once dishonest  
18 with the King family because I thought they would not accept  
19 me. Eventually, I told the truth and they forgave me." Thank  
20 you.

21 Allison, Dr. King's other daughter, is here as well,  
22 Your Honor. She wrote a letter that's Exhibit 27 that  
23 describes Dr. King's role in her education; the intensive  
24 personal involvement that he had in bringing up his children.  
25 "My father always took an active role in my education. He was

1 the president of the PTA." She described his personal  
2 involvement in all the courses that she took. And states, "As  
3 a professional, he worked hard to show me that medicine is  
4 about caring for people. He told me time and time again that  
5 you choose a profession because you love doing whatever it is  
6 you're doing day in and day out. Work is not about the money  
7 you make, but the difference you make." Thank you.

8 THE COURT: Um-hum.

9 MR. BIDDLE: Dr. Edup (ph.)? Thank you. Dr. Edup  
10 wrote a letter, the document that's Exhibit 28, Your Honor,  
11 and he's known Dr. King for almost twenty years. He writes  
12 that "Bill always showed great interest in my sons, always  
13 generous with his time and chatting about -- with them,  
14 inquiring about their progress in school and their post-  
15 graduation plans. He's a wonderful human being of great  
16 character." And he described how Dr. King was involved with  
17 his kids' lives, their medical care as well as being with  
18 their family. "Dr. King, I always know, conducts himself with  
19 honor and dignity. He's the kind of person you could trust  
20 and a friend you could go to if you have a predicament and  
21 wanted some sincere advice." Thanks.

22 We just have a few more here, Your Honor. Ms.  
23 Russell (ph.). Your Honor, Ms. Russell wrote the letter  
24 that's Exhibit 29. She's known Dr. King since he was a  
25 teenager. Here's a lady that's come to court for Dr. King

1        fifty years after she met him. "Over his long professional  
2        career, Bill has earned respect of his colleagues in his  
3        community. He is not materialistic. He lives simply rather  
4        than lavishly. He is very proud of his ability to have both  
5        his daughters attend first class universities and encourage  
6        their ambitions." She also describes how Bill grew up, the  
7        fact that he was brought up by his two older sisters after his  
8        father died when he was ten. And these sisters, Your Honor,  
9        were only a few years older than he was. The government  
10       points out that the defendant had a loving family, yes, but  
11       his parents were his sis --

12                THE COURT: Okay, you're making arguments now and --

13                MR. BIDDLE: Okay.

14                THE COURT: -- you're introducing a --

15                MR. BIDDLE: Fine. Mr. Watson (ph.)? Mr. Watson,  
16        Your Honor, provided Exhibit 20 and he wrote based on his  
17        career as a Baptist minister and a health care administrator,  
18        he writes, Your Honor, during his work with the defendant "I  
19        have known Bill to be a passionate and dedicated man committed  
20        to health care to the underprivileged. He has always been  
21        honest and law-abiding. He did not demonstrate any greedy  
22        behavior but on the contrary he was -- always demonstrating a  
23        concern for the less fortunate than himself and a willingness  
24        to share. Such is the testament of one who decides to work  
25        with the underprivileged community all the years that he has

1       done."

2               THE COURT:   Okay, thank you.

3               MR. BIDDLE:   Thank you very much, Your Honor.   There  
4       are some additional folks here but they did not have a chance  
5       to write a letter to the Court.   Did the Court receive the  
6       photographs?

7               THE COURT:   I did.

8               MR. BIDDLE:   Okay, and rather than go through those  
9       page after page, I think that they visually show the life  
10      experiences that --

11              THE COURT:   They may be made a part of the record, if  
12      you wish?

13              MR. BIDDLE:   Please, I'd move those into evidence as  
14      well as all our exhibits.

15              THE COURT:   Yes.   Yes.

16              MR. BIDDLE:   Sure.   Your Honor, at this point I will  
17      summarize -- well, I can turn to the medical issues.   Would  
18      the Court like me to address the --

19              THE COURT:   I -- this has to come to a close here.

20              MR. BIDDLE:   Okay.

21              THE COURT:   You've had a lot of time.

22              MR. BIDDLE:   I understand, Your Honor, but I need to  
23      lay out the fact that Dr. King has hepatitis C.   It's the  
24      leading killer of people that have liver problems.   There are  
25      8 to 10,000 people a year that die of it.   He's had it for a

1        number years; it was first diagnosed in early 2007. The  
2        medication he is on now is not available in the Bureau of  
3        Prisons. The Bureau of Prison's own manual, which I can offer  
4        to the Court, says that if someone is in treatment, they  
5        should continue treatment until it's concluded.

6                THE COURT: Yeah.

7                MR. BIDDLE: And we've asked the Court to allow him  
8        to consider his illness in two ways. One is that is that he  
9        should be able to self-surrender after February 1st of next  
10       year when he will have a shot at beating this hepatitis C and  
11       secondly that it's a basis to shorten his sentence because of  
12       his overall infirmity. There is no cure for hepatitis C; it  
13       can only be absolutely minimized. And he's acted responsibly  
14       in getting this dealt with. He went to one of the few  
15       programs in the country where someone who's African-American  
16       has a fair shot at getting cured. The cure rate for African  
17       Americans with the current medication is as low as one in five  
18       whereas the national rate is basically one in two.

19               Dr. Muir provided a letter to the Court. It lays out  
20       the nature of his condition. It's a serious condition. The  
21       Bureau of Prisons has a lot of -- they try to deal with it but  
22       their resources are limited. They can't provide him the  
23       medication that he's on now and as a result, Your Honor, the  
24       Court should allow him to postpone his self-surrender until  
25       February of next year so he can beat it and also shorten his

1 sentence to the six months incarceration, nine months home  
2 detention. Dr. King at the end today will provide the Court  
3 with a statement. He's also provided the Court with a written  
4 statement. He's shown great remorse for what happened, for  
5 his conduct, for his misconduct and for all those reasons,  
6 Your Honor, the Court should vary pursuant to Tomko and impose  
7 the requested sentence. Thank you.

8 THE COURT: Thank you. The government?

9 MS. WITZLEBEN: Thank you, Your Honor. With respect  
10 to the issues that have been raised on variance, I'll try not  
11 to belabor the record with respect to the government's  
12 pleadings that have already been filed but I do want to make a  
13 few points for the benefit of today's hearing. First of all,  
14 Your Honor, the guideline -- the 3553 factors require the  
15 Court to consider the nature and the seriousness of the  
16 offense and, Your Honor, this was a very serious crime.

17 This defendant, apparently motivated by nothing more  
18 than greed, decided to steal from the insurance company and  
19 let's take a step back, an insurance company that was  
20 providing coverage for blue-collar workers in Philadelphia.  
21 These were his patients. Women who collected our garbage, who  
22 cross our kids at the corners; these are blue collar workers  
23 who were receiving through their union and ultimately all of  
24 the increased costs of health care fraud are passed on to the  
25 public. You heard testimony about that at the trial. The

1 person from Blue Cross very candidly said we pass these costs  
2 on.

3 So, Your Honor, the taxpayers ended up paying for  
4 this man's crimes. So this is not a victimless crime, Your  
5 Honor. Not only did the insurance company get ripped off to  
6 the tune of three quarters of a million dollars, but those  
7 costs, the costs of health care fraud, are passed on to the  
8 public.

9 In addition, Your Honor, there are other victims in  
10 this case. As the Court knows from the testimony, these forty  
11 patients of the defendant who were -- had medical records,  
12 legitimate medical records, their history of their  
13 gynecological history and problems have been destroyed.  
14 They're gone; they will never be retrieved. And this  
15 defendant choose to do that in order to attempt to cover up  
16 and obstruct in this case. S

17 o this crime is quite serious and we turn to the  
18 history and characteristics of the defendant next under the  
19 factors and Mr. Biddle has done a very eloquent job describing  
20 the defendant's humble beginnings. And I know that this is a  
21 very sad and significant day to all of the people who love Dr.  
22 King and who came here in his support today and who took the  
23 time to write the letters and I have a lot of compassion for  
24 their situation but when we look at what their letters say and  
25 even the testimony of the gentleman who came today before the



1 Court, what we note -- and if you look at his Exhibit, 12,  
2 Defendant's Exhibit 12, Your Honor, they can't believe he did  
3 it. Your Honor, they don't believe he committed this crime.  
4 And that tells us a couple of things about this defendant,  
5 unfortunately Your Honor. He hasn't told them he did it. He  
6 has not accepted responsibility for this crime. He hasn't  
7 told the people he loves, I did it. I overbilled, here was my  
8 reason, et cetera. So that has to go into the Court's  
9 calculation of what the remorse is and whether he's accepted  
10 responsibility and what the deterrent is that comes from that.

11 The other thing, Your Honor, that they, with all due  
12 respect, don't know is what happened in this courtroom. What  
13 the evidence revealed actually happened in this case. And  
14 many of the letters suggest that they would never believe he  
15 would put his own interests ahead of someone else's. That  
16 they would never believe that he would put his own interests  
17 ahead of the patients'.

18 But this Court knows, from having sat through the  
19 trial, that's exactly what he did. He destroyed those  
20 patients' records. He created false records which had things  
21 in them that weren't more true family history of cancer, and  
22 so forth, which now they're kind of stuck with to the extent  
23 that anybody ever believes these records in the future and  
24 third, Your Honor, and let me turn to this medical excuse we  
25 have today. Because I think it's a fairly clear example of,

1       unfortunately, this defendant's willingness to put his own  
2       interests ahead of the interests of others. This defendant  
3       had hepatitis C for some years. We will accept for  
4       purposes --

5               THE COURT: But I see that as thirty years or  
6       something?

7               MS. WITZLEBEN: Yes, Your Honor.

8               THE COURT: Okay.

9               MS. WITZLEBEN: Now, it is possible. Hepatitis C  
10       does not always manifest itself in symptomology and it would  
11       appear that perhaps he had no symptomology. In fact, Your  
12       Honor, in the defense's submission it appears that how he knew  
13       that he had hepatitis C was that in January of 2007, before  
14       this case was even indicted, when he was out in Seattle,  
15       seeking employment at the VA -- at the VA hospital, a routine  
16       screening detected the hepatitis C virus in his blood.  
17       Clearly at that point, Your Honor, he had no symptomology. He  
18       was not suffering from this disease. At that point, the  
19       defendant chose not to seek treatment, Your Honor. There is a  
20       treatment that the Bureau of Prisons would give a person with  
21       hepatitis C, the standard protocol. Now, the evidence we have  
22       from Dr. Muir at Duke suggests that that protocol is less  
23       successful with African-Americans but there's still a twenty-  
24       five percent chance of being cured by that protocol. This  
25       defendant did not seek it, Your Honor, and I submit there's

1       one reason why that might happen. He wasn't suffering from  
2       this illness. There was no symptomology and he didn't have  
3       any reason therefore, in his mind, to seek the treatment that  
4       might have cured him, twenty-five percent chance.

5               Instead, Your Honor, it was not until after he was  
6       convicted in this case that the defendant decided to seek  
7       treatment for his hepatitis C. And he did not elect the  
8       standard protocol at that time. Instead he sought out an  
9       experimental protocol at Duke University and in that  
10      protocol -- and, Your Honor, the agents in this case have  
11      interviewed Dr. Muir by telephone and I don't think there's a  
12      factual dispute about what I'm about to say but if there is,  
13      the agents are prepared to testify today about that interview.  
14      The doctor told the government that this protocol is the most  
15      promising protocol for African-Americans who suffer from  
16      hepatitis C, that only 200 patients would be admitted to this  
17      protocol nationwide. And people were begging to get into this  
18      protocol.

19             And I submit, Your Honor, there were probably  
20      patients in that group who suffer from their hepatitis C; who  
21      had cirrhosis, who had scarring of the liver, who had  
22      consequences from their hepatitis C and who were probably  
23      younger than this gentleman with this degenerative disease.  
24      So, Your Honor, it was very competitive to get into this  
25      protocol and the doctor advised the government that they try

1 to screen out people who can't complete the protocol. And why  
2 is that? Because this is an experimental protocol designed to  
3 prove the efficacy of this drug. And each failure, each  
4 person who bails out partway through costs them one slot of an  
5 ability to prove the drug's efficacy. And only if it's proved  
6 safe and effective will it be made to market and allow all  
7 other African-Americans to have this higher chance at  
8 resolving their hepatitis C. Despite that and knowing that he  
9 had been convicted by a jury of his peers and knowing that he  
10 was facing a substantial federal sentence, this defendant  
11 enrolled himself in the protocol and did not tell the doctor  
12 that there was a very high probability that within the next  
13 year he would be going to federal prison where he could not  
14 receive the drug.

15 Your Honor, as a trained man of medicine, he, above  
16 others, should understand the significance of the experimental  
17 protocol and knew that when he did that, Your Honor, that he  
18 was not only depriving someone else of the slot that he took  
19 but undermining the potential outcome of it. Your Honor, he  
20 did that to try to keep himself out of jail, I submit. He's  
21 hoping that by that conduct this Court will decide he doesn't  
22 have to report until next February or later, you'll see  
23 there's some wiggle room in the defense's filings on whether  
24 February's really the deadline. Okay, and that this will be  
25 sympathetic to the Court. And I submit, Your Honor, under the

1       circumstances of this case, it's exactly the opposite. It  
2       should not engender sympathy; it should engender the Court's  
3       taking into account this defendant's continued willingness to  
4       put his own interests ahead of others.

5               Your Honor, I want to address one more issue which is  
6       this issue of the parsimony provision. Your Honor, the  
7       guidelines, which all of our federal courts lived with for  
8       years, have a very salutary use. They assure, across the  
9       country, that when you're in federal court like defendants  
10      will be treated alike for like crimes. When we look at the  
11      parsimony provision, no more than necessary, how are we to  
12      calculate what that means if we don't look at the universe.  
13      Here is what drives this man's guidelines. How much money he  
14      stole and the way he did it; 750,000 dollars, or you take the  
15      defense number 640,000 dollars. Gives you a specific range.

16             Nothing in his personal circumstances, his history,  
17      changes that. That's an appropriate range, according to the  
18      people at the sentencing guidelines, for someone who stole  
19      that amount of money. And then you add the enhancements which  
20      this Court has found. Someone who also used their special  
21      skills, someone who also used sophisticated means and someone  
22      who attempted to obstruct justice during the investigation.  
23      That, Your Honor, fits very cleanly into the concept of not  
24      having unwarranted disparities.

25             This defendant, with all due respect to his

1       abilities, which I admire, to overcome his initial  
2       circumstances albeit, Your Honor, circumstances nowhere near  
3       as dire as most of the defendants that come before this Court;  
4       defendants who are raised by single parents who are addicted  
5       to drugs. Defendants who are themselves addicted to  
6       something; very difficult circumstances. This defendant, for  
7       all his skill and talent being added to it, had a loving  
8       family. His sister worked, apparently as a maid, to help put  
9       him through school. And those advantages that he acquired  
10      through having a loving family, through having the innate  
11      talent that he had, he squandered, Your Honor. It was his  
12      choice. I submit, Your Honor, those -- none of that  
13      undermines the appropriateness of a guideline sentence in this  
14      case.

15               And finally, Your Honor, I do want to add the other  
16      factor that I think is very important in this case and that's  
17      deterrence. We have in the courtroom today several doctors.  
18      What are they to make, what are doctors at large to make, what  
19      is the public at large to make of a defendant who having  
20      achieved the status of a medical doctor in our society who is  
21      not severely punished for stealing three quarters of a million  
22      dollars out of greed. Thank you, Your Honor.

23               MR. BIDDLE: Your Honor, could I be heard for a  
24      minute?

25               THE COURT: The government really gets the last

1 argument, Mr. Biddle. Somebody behind you was trying to pass  
2 you something and I don't know whether it's important or not,  
3 so you can inquire.

4 MR. BIDDLE: Thank you.

5 (Pause)

6 MR. BIDDLE: I'd ask leave of the Court to address  
7 the issue with Dr. King's medical condition.

8 THE COURT: Go ahead.

9 MR. BIDDLE: The government really mischaracterizes  
10 what transpired here. There's no question Dr. King was not  
11 aware of the possibility that he had hepatitis C till early  
12 2007. The BOP protocol provides that there are a series of  
13 tests that need to be conducted and the record's clear that  
14 over a period of time he had additional tests which confirmed  
15 that. He finally got a biopsy in early -- as part of his Duke  
16 study, late 2008/early 2009 and that is the gold standard test  
17 as the BOP protocol sets forth. Hepatitis C, Your Honor, is  
18 very contagious. The BOP provides that in their manual. You  
19 can't exchange toothbrushes, you essentially have to be  
20 quarantined from other inmates if you have it.

21 This defendant had a duty to do what he could to take  
22 care of this. He was first told it that he had it, the first  
23 indication, in early 2007 when employers said, you can't do  
24 surgery. You can't do surgery because you've got hepatitis C.  
25 When you fly, Your Honor, what do they tell you? The oxygen

1 masks come down and they say parents, put the masks on first  
2 and then put it on your child. Similarly with a doctor, if  
3 you're going to provide care, if you're going to be able to  
4 participate in the life of your community, you've got to deal  
5 with your own problem. You've got to confront it, and that's  
6 what this doctor did. He acted responsibly, Your Honor, and  
7 that's what the record shows, not irresponsibly, and he should  
8 be commended for making the best efforts that he could to beat  
9 this insidious disease. No one knows exactly what the  
10 progression will be.

11 If he gets a guideline sentence and he is sent to a  
12 run-of-the-mill BOP facility, they're not going to track his  
13 liver function. They're not going to be testing it. The  
14 Court's aware from its own experience. There isn't adequate  
15 medical care throughout the BOP to deal with this type of  
16 condition. He's in the middle of treatment right now. He  
17 went through several months of the standard treatment. I  
18 spoke to Dr. Muir personally forty-eight hours ago. Dr. King  
19 failed to respond to the standard treatment. So he's like  
20 those three quarters of the rest of the African-American  
21 population that doesn't respond to the standard treatment.

22 THE COURT: Somebody said that he's known he had this  
23 for a long time?

24 MR. BIDDLE: No, he's not, Your Honor. He didn't  
25 know till January 2007. The disease wasn't discovered until



1 the early 1990s. He got a blood test in early 2007 and they  
2 said we think you've got hepatitis C. Your Honor, it's  
3 progressed to a level 2. Level 2 and it's in medical records  
4 is the level that BOP says you should have antiviral  
5 treatment. It's a virus. Just like AIDS is a virus. Now  
6 this defendant doesn't have AIDS but it's a similar kind of  
7 insidious thing and BOP says, I would put it into evidence if  
8 we had time, BOP says he should finish his treatment. I  
9 called Hank Sadowski who's the Region 3 Bureau of Prisons'  
10 counsel to discuss this issue with him. I spoke to him in  
11 May. I told him about Dr. King's condition. He said you'll  
12 have to speak to the prosecutors about it. I can't say  
13 anything more to you about it. Why did I do that? Because we  
14 wanted to find out what BOP would say about his condition.

15 There is no one here from BOP because Sadowski  
16 wouldn't talk to me. So we did the best thing that we could,  
17 we submitted a letter from Dr. King. I spoke to him forty-  
18 eight hours ago. Dr. King, within a week, is going to be  
19 getting the Boceprevir medication, B-O-C-E-P-R-E-V-I-R.  
20 That's only available through the study and has a much higher  
21 rate --

22 THE COURT: Where does he have to go for this  
23 treatment?

24 MR. BIDDLE: He goes to Duke, Your Honor. He goes  
25 there every week.

1 THE COURT: Once a week?

2 MR. BIDDLE: Once a week, Your Honor, or --

3 THE COURT: For how long?

4 MR. BIDDLE: I'm sorry? Through at least January,  
5 Your Honor. He's got a twelve week, which would be middle of  
6 November, landmark. Dr. Muir told me on Wednesday that if he  
7 doesn't show a positive virological response by mid-October --  
8 I'm sorry, mid November, then he will probably be dropped from  
9 the study. But if he does, then he needs to continue. And  
10 that's also consistent with the BOP protocol because BOP says  
11 that you should be on your antiviral medication for at least  
12 six months.

13 So the government is correct. If he's getting  
14 somewhere with fighting the virus, then we come back into  
15 December and ask for some additional time. But at the very  
16 least, he needs till the end of January to have a shot at  
17 beating this disease.

18 THE COURT: All right, thank you.

19 MR. BIDDLE: Thank you.

20 MS. WITZLEBEN: Your Honor, if I might inquire,  
21 briefly. Defense counsel just represented that this defendant  
22 in fact has never received the experimental drug so far? He  
23 receives it next week for the first time?

24 MR. BIDDLE: Your Honor --

25 MS. WITZLEBEN: In which case, Your Honor, any risk

1 associated to his health from abandoning the new drug is gone.

2 MR. BIDDLE: Your Honor, I explained this to the  
3 government the study -- and they interviewed this man, they  
4 interviewed him, even though he's my client's doctor, without  
5 contacting me, without providing any HIPAA form, without  
6 meeting with the doctor. Be that as it may, they interviewed  
7 him. I told them before they interviewed him that in the  
8 experiment that Dr. King is in, he would get the standard  
9 treatment plus he would get either a placebo which is not the  
10 drug or he would get the new medication. Okay.

11 He has not responded to the standard treatment.  
12 Pursuant to the experimental protocol, forty-eight hours ago  
13 he was told, and Dr. Muir was told, that Dr. King had not been  
14 getting the experimental medication but now he's going to get  
15 it. I did an e-mail to the probation officer and I told the  
16 government about this possibility four months ago. Okay. And  
17 that's why we're asking till the end of January. If he's  
18 locked up and he goes to BOP, he isn't going to get it.

19 THE COURT: Okay, one more time. That -- go ahead.

20 MS. WITZLEBEN: Thank you, Your Honor. I do want to  
21 address two issues that just arose in what defense counsel  
22 said. First of all, Your Honor, let's accept for the purpose  
23 of today's record that although he had it, he didn't know he  
24 had it until January of 2007.

25 THE COURT: All right.

1 MS. WITZLEBEN: That was a year before he was  
2 indicted. He did not seek treatment during that year. In  
3 fact, defense counsel wants to say that the disease is highly  
4 communicable but what the VA said was you can't do surgery  
5 because of the risk of blood to blood transfer of the virus.  
6 He treated patients at the VA after knowing he had this  
7 disease. So, Your Honor, he can certainly serve in prison  
8 knowing he has the disease. Defense counsel makes much of the  
9 fact he didn't have --

10 THE COURT: But there's an issue. He's been selected  
11 as one of 200 --

12 MS. WITZLEBEN: Yes, Your Honor, through fraud.

13 THE COURT: Huh?

14 MS. WITZLEBEN: Through his own fraud, Your Honor, he  
15 was selected.

16 THE COURT: Why?

17 MS. WITZLEBEN: The defendant told us that had they  
18 known that he would go to prison or might go to prison he  
19 would not have been admitted.

20 THE COURT: Okay. All right, he's there. All right.  
21 We'll deal with this later. All right. Dr. King, you have  
22 the right to address the Court on your own.

23 THE DEFENDANT: Yes, Your Honor. You know, I want to  
24 actually apologize --

25 THE COURT: You may stay seated if you wish, it's up

1 to you. Wherever you're more comfortable.

2 DR. KING: Yes, Your Honor, I want to apologize to  
3 the Court. I want to apologize to IBC, Blue Cross Blue Shield  
4 and to the court system for my billing actions which I wrongly  
5 did. I'm truly sorry for that. At this point in time I  
6 hardly can't explain to you how sorry I am for my actions. I  
7 didn't bill in a way I should have and I billed incorrectly  
8 and I apologize for to the auditors for my actions when I saw  
9 my -- actually when I saw my world coming down upon me. Over  
10 this time I also want to apologize to all the people who've  
11 come and supported me and I want to apologize to my family for  
12 taking their names and putting them in this situation and  
13 again, Your Honor, I'm truly sorry for that. And right now,  
14 Your Honor, I'm just so hurt right now about this whole  
15 situation that I don't feel as I can continue to say very much  
16 more but I do want to make sure that you understand that I'm  
17 truly sorry for my actions.

18 THE COURT: Okay. Thank you, Doctor.

19 MR. BIDDLE: Your Honor, the only remaining open  
20 issue that was computed in the papers was restitution. I  
21 don't know when the Court wants to address that but that is  
22 certainly a relevant --

23 THE COURT: I -- you know, you should have brought it  
24 up before he addressed --

25 MR. BIDDLE: I apologize, Your Honor, this is my

1 first appearance before the Court. I wasn't sure in what  
2 order. Some courts take restitution ninety days after  
3 sentencing.

4 THE COURT: Make your argument as to restitution.

5 MR. BIDDLE: Your Honor, we -- I've laid out in our  
6 papers, we contend that the restitution should be 639,000.  
7 That's the amount these prosecutors told this jury, not here  
8 today, that was the amount of IBC's loss. They repeatedly  
9 told the jury at the end of the trial that they could be  
10 confident that IBC had lost 639,000 dollars. And, of course,  
11 loss amount is the restitution amount.

12 The Court should also find the defendant's got a  
13 check which we're prepared to give to the clerk's office for  
14 20,000 dollars today, that the defendant can also make an  
15 additional payment of 80,000 additional dollars within thirty  
16 days and that the Court's orders should provide that  
17 additional payments should be in the amount of 2,500 per month  
18 thereafter to make IBC whole. That's consistent with the  
19 guidance from around the country as to the defendant's  
20 resources; procedurally it needs to be something that this  
21 Court determines pursuant to Third Circuit law. It would be  
22 the appropriate restitution, the appropriate amount and the  
23 appropriate payment schedule given his resources and the fact  
24 that a great deal of his money is in retirement accounts which  
25 the Third Circuit has not yet decided can be tapped for

1       restitution. Thank you.

2                   MS. WITZLEBEN: Your Honor, I'll try to be as brief  
3       as possible. The figure that the jury found was the  
4       forfeiture amount. The government is fully satisfied with  
5       that amount for forfeiture and does not suggest that should be  
6       changed for forfeiture. We do ask the Court to enter the  
7       judgment of forfeiture that we filed back in December a  
8       proposed order.

9                   But the defendant, Your Honor, is required by law to  
10      pay restitution as well and with respect to the issue of  
11      restitution, Your Honor, the Court is to decide as fairly as  
12      possible what that amount should be and with all due respect  
13      to defense's argument, it was very clear at the time of trial  
14      and was argued to the jury in the forfeiture phase that the  
15      amount of money they were deciding, 639,000 dollars, was a  
16      very low estimate because the insurance company in calculating  
17      that number had given the defendant credit as if each visit  
18      was an actual visit. But as the jury found, close to 15  
19      percent, 14.5 percent, according to the evidence at trial,  
20      were in fact ghost visits. No patient was actually there. So  
21      the defendant shouldn't be paid for those.

22                   In addition, Your Honor, the Blue Cross people  
23      decided to assume that the first time each patient was seen it  
24      was on a consultation and once this went to the stage where  
25      the agents went through literally every medical record and

1 found none were consultations, that should be added on as  
2 well, Your Honor, which brings us to the figure calculated by  
3 the probation office quite arduously with which the government  
4 agrees. I can address further how that was calculated if the  
5 Court has questions but I think it's laid out very clearly in  
6 the PSR.

7 So, Your Honor, with respect to the amount of the  
8 loss for restitution, we do believe it should be the higher  
9 figure. With respect to the defendant's ability to pay, this  
10 defendant, Your Honor, has retirement accounts. He has assets  
11 which appear to total in excess of 576,000 dollars just in  
12 accounts and he also has cars and homes. It's more than one  
13 piece of real estate. And the house in Maryland that he owns  
14 is 3800 square foot house had an assessed value this year of  
15 470,000 dollars and change. Your Honor, we respectfully  
16 ask the Court to enter a judgment ordering the defendant to  
17 pay full restitution due immediately with interest. This  
18 defendant has the ability to liquidate assets and if properly  
19 given the right incentives, we believe he will and he can  
20 reach an accord with the government which would allow him to  
21 get out from under both restitution and forfeiture when he  
22 makes full restitution to the victim. With respect to the  
23 issue that somehow the government can't access those  
24 retirement accounts, Your Honor, we respectfully disagree with  
25 defense counsel for the reasons briefed.



1           THE COURT: Do I have to deal with that at this  
2 point?

3           MS. WITZLEBEN: If it's not necessary to the Court,  
4 I'll rest on my argument.

5           THE COURT: Well, I mean, that is going to be a  
6 matter of collection, right?

7           MS. WITZLEBEN: Yes, Your Honor, that's correct.

8           (Pause)

9           THE COURT: We've had a good bit of discussion on the  
10 enhancements that were set forth in the presentence report  
11 which I adopt, incidentally. There were three and each one  
12 enhanced the offense level by two points putting it in a  
13 category -- offense level category of 27 which would call for  
14 a suggested guideline sentence of seventy to eighty-seven  
15 months. I approved each one of those enhancements because I  
16 think each one of them was established.

17           However, after adding them in and viewing the conduct  
18 that they involved, some of which was already set forth in  
19 indictments, some of it overlapping with each other, I am  
20 going to vary from the guideline and reduce the level to an  
21 offense level of 21 calling for a thirty-seven to forty-six  
22 month sentence.

23           The defendant was convicted of all counts in this  
24 case. It involved upcoding and when I say upcoding, I don't  
25 mean somebody misinterpreted a coding book where somebody

1 didn't pay attention when they were being taught how to deal  
2 with these codes. These were flagrant; no misunderstanding  
3 here. The doctor knew what he was doing. They were almost  
4 all for code 99245 and that happens to be one of the higher --  
5 I think an average of almost ninety-six dollar reimbursement.  
6 It resulted in a vast overbilling and I determine the amount,  
7 it has been correctly set forth in paragraph 150 of the  
8 presentence report at 780,151 dollars. The jury also found  
9 for forfeiture in the amount of 639,578 dollars.

10 During the course of the investigation, the  
11 defendant, maybe out of panic, but in any event attempted to  
12 conceal the offense by withholding, perhaps destroying or  
13 otherwise hiding, requested patient files. He subsequently  
14 used his medical training to create fictitious patient files.

15 He has a lot of loyal friends and good people who  
16 know another aspect of him and there is another aspect of him.  
17 It's the aspect that drove him to get a medical degree and to  
18 lead an otherwise fine life and we appreciate the input that  
19 their letters and statements have made. But this is a serious  
20 offense. It went on for over four years. There was time to  
21 reflect and reconsider. It wasn't a spur of the moment thing.

22 Pursuant to the Sentencing and Reform Act of 1984, it  
23 is the judgment of the Court that the defendant, Dr. William  
24 King, is hereby committed to the custody of the Bureau of  
25 Prisons to be imprisoned for a term of thirty-six months on

1 each count I-LXXXII, all to be served concurrently. Upon  
2 release from imprisonment, the defendant shall be placed on  
3 supervised release for a term of three years. Within seventy-  
4 two hours of release from custody of the Bureau of Prisons, he  
5 shall report in person to the probation office in the district  
6 to which he is released.

7 While on supervised release he shall not commit  
8 another federal, state or local crime. He shall be prohibited  
9 from possessing a firearm or dangerous device. He shall not  
10 possess an illegal controlled substance and shall comply with  
11 the other standard conditions adopted by this Court for  
12 individuals on supervised release.

13 In addition, he shall provide the U.S. Probation  
14 Office with full disclosure of his financial records to  
15 include yearly income tax returns upon the request of the  
16 probation office. The defendant shall cooperate with the  
17 probation office in the investigation of his financial  
18 dealings and shall provide truthful monthly statements of his  
19 income. He is prohibited from incurring any new credit  
20 charges or opening new accounts unless he is in compliance  
21 with his payment obligations. He shall cooperate in the  
22 collection of DNA as directed by the probation officer.

23 It's further ordered to make restitution in the  
24 amount of 780,151 dollars. The Court will waive the interest  
25 requirement in this case. Restitution is due immediately. In

1 the event that the entire restitution is not made prior to --  
2 well, we're just going to leave that open because we have an  
3 additional complication in this case.

4 It's further ordered that the defendant shall pay to  
5 the United States Government a fine of 12,500 dollars on each  
6 of counts -- that is composed of -- on each of Counts I and II  
7 fines of 250 dollars and Counts III-LXXXII, 150 dollars.  
8 Interest on that is waived also.

9 When the defendant does go to report to prison, it is  
10 recommended that he participate in the Bureau of Prisons'  
11 Inmate Financial Responsibility Program and provide minimum  
12 payments of 25 dollars per quarter toward the fine. In the  
13 event that it is not -- the fine is not paid prior to the  
14 commencement of supervised release, the defendant shall  
15 satisfy the amount due in monthly installments of not less  
16 than 500 dollars to commence thirty days after release from  
17 confinement.

18 It's further ordered that the defendant shall pay to  
19 the United States a total special assessment of 8,200 dollars  
20 which is due immediately.

21 Now, as far as reporting to prison, however it is  
22 viewed -- I mean, the government views the medical program  
23 that Dr. King has enrolled in as a means of avoiding  
24 something; it sounds like a unique opportunity and I don't  
25 want to interfere with it. So I am, at this point -- do we

1 have anything from the Bureau of Prisons that would indicate  
2 that -- I guess they have nothing similar to this program, I  
3 would assume that.

4 MS. WITZLEBEN: No, Your Honor. My understanding is  
5 that because it's an experimental drug, which he hasn't gotten  
6 yet --

7 THE COURT: I know. But he is one of the 200 and I'm  
8 not taking that away from him.

9 MS. WITZLEBEN: Very well, Your Honor. I do want to  
10 point out that the Bureau of Prisons would provide him with  
11 the standard protocol. That's what the typically do for  
12 inmates with hepatitis C. But they are not allowed to provide  
13 him --

14 THE COURT: But, you know, there is a possibility  
15 that he could be housed somewhere near where Duke University  
16 is and could be furloughed to go get that treatment?

17 MS. WITZLEBEN: As I understand it, Your Honor, just  
18 from our brief conversation with Dr. Muir, I mean, I suppose  
19 it's theoretically a possibility but the doctor indicated to  
20 me that -- I think the drug's administered by an IV. They  
21 might not permit him to -- they'd have to furlough him every  
22 week or I don't know how often his treatments are. But just  
23 to be clear for the record, Your Honor, my understanding is  
24 that there's a certain number of weeks where he would receive  
25 the drug and then there's a very long period of time when he

1 would be coming back on some periodic basis for medical  
2 testing to see if the drug's having whatever the desired  
3 effect is. So, I think we're talking about a very long period  
4 of time here where he would need to have fairly regular access  
5 to the professionals at Duke in order to stay in the study.

6 MR. BIDDLE: Your Honor, I don't believe, from my  
7 experience, I guess being a former prosecutor and criminal  
8 defense, that there's any way the BOP is going to release  
9 someone or allow someone who's in their care to get treatment  
10 from someone outside the facility. It just doesn't happen.

11 THE COURT: It happens in the state court. I --

12 MR. BIDDLE: Your Honor, I've never heard of it in  
13 BOP and we've had them with a lot of different types of  
14 clients.

15 THE COURT: It was a thought.

16 MR. BIDDLE: It's a very good thought, Your Honor,  
17 but the BOP is a beauracracy and I just -- with all due  
18 respect to the Court, I don't see that happening. I could  
19 quote here from the guidelines for the prevention and  
20 treatment of viral hepatitis from BOP and it says, "Inmates  
21 entering BOP custody who are already on treatment for  
22 hepatitis C should be maintained on antiviral therapy". So we  
23 submit, Your Honor, that Dr. Muir told me that the critical  
24 twelve-week period for this medication is going to be in the  
25 middle of November so if the Court would allow Dr. King to

1 stay out on pretrial -- I'm sorry, post-sentence release with  
 2 a self-surrender date later than that and we could have  
 3 a status conference, say, at Thanksgiving. or shortly  
 4 thereafter; the Court would be able to address that. If --  
 5 Dr. Muir said that if Dr. King hasn't made progress by mid-  
 6 November with the new therapy, he will be terminated by the  
 7 study. But if he does make progress, then he would need a  
 8 later self-surrender date.

9 THE COURT: He has a self-surrender date of December  
 10 1st.

11 MR. BIDDLE: Okay, and I will come back to the Court  
 12 in mid-November as soon as I hear from Dr. Muir with respect  
 13 to Dr. King's condition if there is any basis to further  
 14 postpone it. But thank you, Your Honor, for the December 1st,  
 15 that certainly will help, though.

16 THE COURT: I will sign the government's motion for  
 17 forfeiture.

18 MS. WITZLEBEN: Thank you, Your Honor.

19 THE COURT: I'm advising Dr. King that he has ten  
 20 days from today to file an appeal.

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: If he cannot afford an attorney to file  
 23 and argue the appeal, one will be provided for him free of  
 24 cost to himself.

25 MR. BIDDLE: A housekeeping question. The Court, in

1 listing conditions of supervised release, seemed to include  
2 further financial disclosures but I wasn't sure whether that  
3 was prior to supervised release starting or just supervised  
4 release. Okay, don't know. We've provided a lot of financial  
5 information. We've provided tax returns. We can certainly  
6 cooperate with Mr. Posey (ph) or whomever his successor is  
7 but --

8 MS. WITZLEBEN: Your Honor, the government would like  
9 the opportunity to secure under oath some testimony concerning  
10 the assets. We want to assure there's no further dissipation  
11 of the assets that are required for restitution payments.

12 THE COURT: All right. Prior to his supervised  
13 release.

14 MS. WITZLEBEN: Thank you, Your Honor.

15 THE COURT: Anything further?

16 MR. BIDDLE: The only application I would have, Your  
17 Honor, is that the 12,500 going to the fine is just going to  
18 be -- make it more difficult to make full payment of  
19 restitution so the pretrial services report recommended no  
20 fine; 788,000 is high number and given the priority to paying  
21 IBC, the government knows this better that a penny of that  
22 fine money can be given to IBC.

23 THE COURT: The sentence stands.

24 MR. BIDDLE: Okay, Your Honor.

25 THE COURT: If there's nothing further.



1 MR. BIDDLE: Okay. Thank you.

2 THE COURT: We'll recess at this time.

3 (Court is adjourned)

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C E R T I F I C A T I O N

I, Rivkah Levis, the court approved transcriber, do  
hereby certify the foregoing is a true and correct transcript  
from the official electronic sound recording of the  
proceedings in the above-entitled matter.

Rivkah Levis

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RIVKAH LEVIS

August 26, 2009

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